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December 9, 2004

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Mr. Lawrence H. Norton
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5576

Dear Mr. Norton:

On behalf of Tony Knowles for U.S. Senate and Leslie D. Riddle as Treasurer ("Respondents"), this letter is submitted in response to the complaint filed by Timothy A. McKeever and subsequently labeled MUR no. 5576 ("the Complaint").

For the reasons set forth below, the Federal Election Commission should find no reason to believe that the Respondents have violated the Federal Election Campaign Act of 1971, as amended or the Commission's regulations, and it should dismiss this matter.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. See 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation may not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001). The Complaint identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." *Id.* Without more, the Complaint does not contain sufficient facts for the Commission to find reason to believe that a violation has occurred.

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As we explain below, the Complaint does not plead facts sufficient to allege a violation of law, and none of the evidence presented supports the allegations of coordination made by the Complaint.

A. Common Vendor Coordination Does Not Apply to Campaigns

The Complaint alleges that the New Democratic Network ("NDN") television advertisements were coordinated with the Knowles campaign through a common vendor. Even if true, this allegation does not constitute a violation of federal election law.

The standard for a coordinated communication is found at 11 C.F.R. § 109.21. This regulation makes clear that while coordination through a common vendor or a former employee of the campaign may result in an illegal contribution by an outside entity, there must have been either a request or suggestion, material involvement, or a substantial discussion for a campaign to have received an in-kind contribution.

Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee, or an agent of any of the foregoing, engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

11 C.F.R. § 109.21(b)(2).

The Complaint focuses primarily on the information that a common vendor might convey from the Knowles campaign to an outside organization. Even if that has occurred – and there is no evidence that it has – it would not trigger an in-kind contribution that was received by the Knowles campaign. The Complaint does not plead sufficient facts to allege that coordination has resulted in an in-kind contribution reportable by the Knowles campaign.

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B. There Was No Coordination with the New Democrat Network

The Complaint also contains an unsubstantiated allegation of more active coordination between NDN and the Knowles campaign: "It is unclear whether the NDN has produced and distributed these ads at the suggestion or request of the Knowles campaign or after substantial discussion with the Knowles campaign but, given the fact that the same media buyer is being used to buy the time for both the Knowles campaign and NDN, it seems likely that there has been discussions between NDN and/or its agent and the Knowles campaign and its agent." Complaint at p. 2.

The Complaint does not merely presume coordination through a common vendor based on the use of a common vendor by both a campaign and an outside entity. It presumes active, face-to-face meetings between the Knowles campaign and NDN under 11 C.F.R. § 109.21(d)(1-3). This presumption is completely unsubstantiated. The Complaint assumes a presumption of coordination, a position considered and rejected by the Commission when the coordination regulations were promulgated.

When drafting the regulation defining coordinated communications, the Commission refused to prevent campaigns and outside organizations from using common vendors, noting that it "disagrees with those commenters who contended the proposed [common vendor] standard created any 'prohibition' on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination." Bipartisan Campaign Reform Act of 2002 Reporting, 68 Fed. Reg. 404, 436 (Jan. 3, 2003).

The Complaint alleges direct coordination between Respondents and NDN, yet it identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960. Indeed, the Complaint argues only that it "seems likely" that such coordination took place. The Complaint's suspicion of impropriety is not sufficient to allege a violation of federal election law.

C. The Communications Did Not Meet the Content Standard of 11 C.F.R. § 109.21(c)

For a communication to be coordinated, it must meet both the content and the conduct standards found in 11 C.F.R. § 109.21. The NDN advertisements at issue did not satisfy the coordination content standard of 11 C.F.R. § 109.21(c).

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For a communication to be coordinated with a federal candidate, it must be an electioneering communication; a dissemination of campaign materials; a public communication that expressly advocates the election or defeat of a clearly identified candidate; or a public communication that, among other requirements, refers to a clearly identified candidate for federal office. *See id.*

The NDN television advertisements that aired in Alaska did not meet any of these standards. Indeed, the advertisements did not refer to a federal candidate at all; only issues and political parties are mentioned. Without a reference to a federal candidate, the NDN advertisements do not meet any of the content standards, and so they cannot have been coordinated with a candidate under the meaning of section 109.21.

For the reasons detailed above, Respondents respectfully request that the Commission dismiss the Complaint and close the file.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Marc E. Elias', is written over a horizontal line. The signature is stylized with a large 'M' and 'E'.

Marc E. Elias

Rebecca H. Gordon

Counsel to Tony Knowles for U.S. Senate

Leslie D. Ridle, Treasurer

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